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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/292,191	04/15/1999	WILLIAM MEYER SMITH	AT9-98-355	3200

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EXAMINER

WILLETT, STEPHAN F

ART UNIT

PAPER NUMBER

2152

DATE MAILED: 07/03/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
09/292,191

Applicant(s)  
Smith et al.

Examiner  
Stephan Willett

Art Unit  
2152



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Apr 15, 1999.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 2 6) ☐ Other:

**DETAILED ACTION**

***Title Change***

1. Pursuant to MPEP 606.01, the title should be changed to provide a complete and detailed description of the invention.

***Drawings***

2. The drawings are objected to because of the informalities noted on the attached PTO 948. Correction is required.
3. This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U. S.C. 102(e) that form the basis for the rejections under this section made in this Office action:

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

Claims 1-3, 10-12, 19-21, 28-31, are rejected under 35 U.S.C. 102(e) as being anticipated by Berstis et al. with Patent Number 6,115,745.

5. Regarding claim(s) 1, 3, 10, 12, 19, 21, 28-29, Berstis teaches *determining availability of resources*, col. 5, lines 30-40. Berstis teaches *allocating a scheduled time to process a data*

*transfer request*, col. 6, lines 17-20.

6. Regarding claim(s) 2, 11, 20, 30, Berstis teaches *selecting and notification of a time slot*, col. 5, lines 40 and 50-52.

7. Regarding claim(s) 31, Berstis teaches *Internet use*, col. 4, lines 40-41

***Claim Rejections - 35 USC § 103***

8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103© and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 4-9, 13-18, 23-27 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berstis et al. with Patent Number 6,115,745 in view of Guarneri et al. with Patent Number 5,631,907.

11. Regarding claim(s) 4, 13, 22, 32, Berstis teaches scheduling network activities. Berstis teaches *determining availability of resources*, col. 5, lines 30-40. Berstis teaches *allocating a*

*scheduled time to process a data transfer request*, col. 6, lines 17-20. Berstis teaches the invention in the above claim(s) except for explicitly teaching *breaking up data into subfiles and said data is specifically software*. In that Berstis operates to transfer data over a network, the artisan would have looked to the computer network arts for details of implementing various digital signaling processing operations. In that art, Guarneri, a related data distributing network teaches “distributing data to a plurality of destinations”, col. 6, lines 59-60 in order to provide “software or data to be transmitted”, col. 6, lines 67. Guarneri, specifically teaches “the data is processed into blocks”, col. 7, lines 3, 59-60. Transmitting software data over a network divided into subfiles or blocks is taught. Further, Guarneri suggests “large files .... or executable (object code) files”, col. 12, lines 18-23 may be transmitted. The motivation to incorporate subfiles insures that network performance is increased, especially with large files. Thus, it would have been obvious to one of ordinary skill in the art to incorporate subfiles as taught in Guarneri into the network scheduling system described in the Berstis patent because Berstis operates with transferring data and Guarneri suggests that optimization can be obtained with subfiles. Therefore, by the above rational, the above claim(s) are rejected.

12. Regarding claims 5, 14, 23, Berstis teaches *real time services*, col. 1, lines 45-48. Thus, the above claim limitations are obvious in view of the combination.

13. Regarding claims 6-7, 15-16, 24-25, Berstis teaches *time slot division* as multiple tasks, col. 13, lines 53-57. Thus, the above claim limitations are obvious in view of the combination.

14. Regarding claims 8-9, 17-18, 26-27, Berstis teaches *slot priority* as weights, col. 8, lines 64-66. Thus, the above claim limitations are obvious in view of the combination.

*Conclusion*

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure is disclosed in the Notice of References Cited. The other references cited teach numerous other ways to perform scheduling, thus a close review of them is suggested.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephan Willett whose telephone number is (703) 308-5230. The examiner can normally be reached Monday through Friday from 8:00 AM to 6:00 PM.

17. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Rinehart, can be reached on (703) 305-4815. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-6606.

18. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-9605..

sfw

June 26, 2002

  
MARK H. RINEHART  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100